

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

		Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)
Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/CH2004/000270	International filing date (day/month/year) 05.05.2004	Priority date (day/month/year) 09.05.2003
International Patent Classification (IPC) or both national classification and IPC A23L1/22, A23L1/222, A23L1/00, B01J13/20, A61K9/16		
Applicant GIVAUDAN SA		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:	Authorized Officer
 European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Tallgren, A Telephone No. +31 70 340-3933
	

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - in written format
 - in computer readable form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II Priority

1. The following document has not been furnished:

copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	8,9
	No: Claims	1-7,10,11
Inventive step (IS)	Yes: Claims	
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-11
	No: Claims	

2. Citations and explanations

see separate sheet

JC20 Rec'd PCT/PTO 07 NOV 2005

ITEM V

1. The following documents (D) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

- D1: WO 93/19622 A (TASTEMAKER) 14 October 1993 (1993-10-14)
- D2: FR-A-2 570 604 (PHARMEDIS SA) 28 March 1986 (1986-03-28)
- D3: WO 99/17871 A (GIVAUDAN ROURE INT ; SOPER JON C (US)) 15 April 1999 (1999-04-15)
- D4: US-A-3 567 650 (BAKAN JOSEPH ANTHONY) 2 March 1971 (1971-03-02)
- D5: US-A-3 971 852 (BERGENSTEN ROBERT W ET AL) 27 July 1976 (1976-07-27)
- D6: EP-A-0 455 598 (WARNER LAMBERT CO) 6 November 1991 (1991-11-06)

2. NOVELTY OBJECTIONS

D1 describes a method for preparing heat-stable and fracturable spray-dried free-flowing solid flavor oil capsules comprising forming an emulsion of discrete flavor oil droplets in water, forming a polymeric coating (alginate as polymer and carboxymethylcellulose as filler) over the discrete flavor oil droplets by coacervation to produce flavor oil capsules in the water, cross-linking said polymeric coating on the capsules in the water, spray drying said polymer coated flavor oil capsules to remove the water and provide heat-stable and spray-dried free-flowing solid flavor oil capsules. (claim 1,7,9, example 1, page 8 line 6- page 10 line 5). Consequently, the subject matter of claims 1-7, 10,11 is considered as being not new in view of D1 (Art 33 (2) PCT).

D2 describes a method for preparing spray-dried free-flowing solid flavor oil capsules comprising forming an emulsion of discrete flavor oil droplets in water, forming a polymeric coating (gelatin as polymer and sulphates as filler) over the discrete flavor oil droplets, cross-linking said polymeric coating on the capsules and spray drying said polymer coated flavor oil capsules (claims 1,5, example 1, page 1 lines 11-20, page 2 line 18- page 3 line 6). Consequently, the subject matter of claims 1 and 10,11 is considered as being not new in view of D2 (Art 33 (2) PCT).

D3 describes a method for preparing dried free-flowing solid oil capsules comprising forming an emulsion of oil droplets in water, forming a polymeric coating (gelatin or gum

as polymer and carboxymethylcellulose as filler) over the discrete flavor oil droplets, cross-linking said polymeric coating on the capsules and drying said polymer coated oil capsules. Additional flavor oil coating (claims 1,5,10,30, examples 1-3). Consequently, the subject matter of claims 1 and 10,11 is considered as being not new in view of D3 (Art 33 (2) PCT).

D4 describes a method for preparing dried free-flowing solid oil capsules comprising forming an emulsion of oil droplets in water, forming a polymeric coating (dextrans as polymer and carboxymethylcellulose as filler) over the discrete flavor oil droplets, cross-linking said polymeric coating on the capsules and drying said polymer coated oil capsules (example 4). Consequently, the subject matter of claims 1 and 10,11 is considered as being not new in view of D4 (Art 33 (2) PCT).

D5 describes a method for preparing dried free-flowing solid oil capsules comprising forming an emulsion of oil droplets in water, forming a polymeric coating (polysaccharide, mannitol and polyvinyl alcohol) over the discrete flavor oil droplets, cross-linking said polymeric coating on the capsules and drying said polymer coated oil capsules (example 9). Consequently, the subject matter of claims 1 and 10,11 is considered as being not new in view of D5 (Art 33 (2) PCT).

D6 describes a method for preparing dried free-flowing solid oil capsules comprising forming an emulsion of oil droplets in water, forming a polymeric coating (polysaccharides and fillers) over the discrete flavor oil droplets, cross-linking said polymeric coating on the capsules and drying said polymer coated oil capsules (claim 9, page 3 line 20- page 5 line 27). Consequently, the subject matter of claims 1 and 10,11 is considered as being not new in view of D6 (Art 33 (2) PCT).

3. INVENTIVE STEP OBJECTIONS

Dependent claims 8,9 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty or inventive step, the reasons being as follows:

The features of dependent claims 8,9 have already been employed for the same purpose (see documents D1-D6). It would therefore be obvious to the person skilled in

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the art, to apply these features with corresponding effect. Consequently, the subject matter of claims 8,9 is considered as being not inventive in view of D1-D6 (Art 33(3) PCT).

None of the claimed compositions, products or processes are considered to be inventive in view of D1-D6 (Art 33(3) PCT). Having regard to the claimed compositions, products or processes and the prior art known (D1-D6), it is considered that the man skilled in the art would regard these compositions, products or processes of the present invention (as far as novel) as an obvious alternative to those known. Therefore, unless an ~~unexpected effect~~ for the present compositions, products or processes (as far as novel) over the prior art disclosure from D1-D6 can be demonstrated, these compositions, uses or methods do not fulfill the requirements of Art 33(3) PCT.